RECENT CASE NOTES

AGENCY—MASTER AND SERVANT—LIABILITY OF MASTER FOR INJURY TO INFANT VOLUNTEER.—The driver of the defendant's three-horse van, without authority to hire servants for the master, requested the plaintiff, a fourteen-year old boy, to assist him. The plaintiff was injured by one of the horses and brought an action for personal injuries. *Held,* that the plaintiff could not recover, although the driver was negligent in intrusting the handling of the horses to him, since the latter was in no better position than a hired servant. *Heasmer v. Pickfords, Ltd.* (1920, K. B.) 36 T. L. R. 818.

The view is well settled in England, that a volunteer, as regards the master's liability towards him, is in the same position as if he were a servant, and assumes all the ordinary risks of service, including that of negligence of a fellow servant. *Degg v. Midland Ry.* (1857, Exch.) 1 H. & N. 773; Pollock, *Torts* (9th ed. 1912) 106-7. But a master will be liable to a volunteer who assists in the use of an instrumentality not fit and proper for its purpose. See *Bass v. Hendon Urban District Council* (1912, C. A.) 28 T. L. R. 317. Some duty of the master to instruct an infant servant in the use of dangerous instrumentalities, is recognized though it is capable of being delegated. *Cribb v. Kynock* [1907] 2 K. B. 548; *Young v. Hoffman Mfg. Co.* [1907] 2 K. B. 646. Minor servants assume only those risks pointed out to them or discernible by a person of their age, capacity, and experience, in the exercise of ordinary care. 4 Thompson, *Negligence* (2d ed. 1904) sec. 4685; 1 Bailey, *Personal Injuries* (2d ed. 1912) 681. If the boy is in the position of a servant so as to bar recovery for the driver's negligence, he should be in the position of a servant as regards the master's duty to see that a minor servant is properly instructed. But no point was made in the instant case of the failure to warn and instruct. The majority of the workmen's compensation acts cannot help a volunteer, for besides depending, usually, on contract, express or implied, they exclude casual employees from their operation. 20 Halsbury, *Laws of England* (1911) secs. 326-330; 3 Bailey, *Personal Injuries* (2d ed. 1912) sec. 871 ff. (text of American acts); see *State v. District Court* (1917) 138 Minn. 416, 165 N. W. 268 (emergency); also (1917) 27 YALE LAW JOURNAL, 571. In the United States, at common law, a volunteer is not at all on the footing of a servant, for the relation lacks the consent of the master, and such a person assumes all the risks of the situation, save that of wanton or wilful injury, not merely all the *ordinary* risks. *Hot Springs Ry. v. Dial* (1893) 58 Ark. 318, 24 S. W. 500; *Hunter v. Corrigan* (1909) 139 Ky. 315, 122 S. W. 131; 43 L. R. A. (N. S.) 187, note. See also (1917) 27 YALE LAW JOURNAL, 1086. Age and mental capacity are then irrelevant inquiries. *Atlanta & W. P. Ry. v. West* (1905) 121 Ga. 641, 49 S. E. 711; *cf. Wells v. Kentucky Distilleries Co.* (1911) 144 Ky. 438, 138 S. W. 278 (*ratio* analogous to attractive nuisance cases). However, the tendency in the United States is to permit recovery by a volunteer who acts to prevent possible injury to property or persons as a result of a defendant's negligence. See (1917) 27 YALE LAW JOURNAL, 960. The plaintiff's act in the instant case was a little less commendable. The decision in the instant case is in accord with the great majority of the English and American cases, though it seems highly artificial to base it on the doctrine of common employment. Both the English and American views are, it would seem, unsatisfactory in their result to society.

CONTRACTS—ILLEGALITY—TRANSFER OF TITLE WITHOUT DELIVERY OF POSSESSION.—The plaintiff built a house and sold it to the defendant for immoral purposes, taking notes and a deed of trust in payment. After payment of

some of the notes, default was made and the property sold under the deed of trust to the plaintiff, who, upon the defendant's refusal to surrender possession, brought trespass to try title. *Held,* that the sale by the trustee executed the contract so that the plaintiff was entitled to his remedy. *Hall v. Edwards* (1920, Tex. Com. App.) 222 S. W. 167.

Before the sale by the trustee the plaintiff was without remedy. In cases of illegal leases or conditional sales some courts have allowed the lessor or the vendor to recover his goods upon non-payment. *Case v. Monk* (1913) 7 Ala. App. 419, 62 So. 268. Other courts have not allowed recovery. *Phillip Levy & Co. v. Davis* (1914) 115 Va. 814, 80 S. E. 791. But where the complete title has passed the cases are nearly uniform in not allowing the vendor to recover his property. *St. Louis, V. & T. H. Ry. v. Terre Haute & I. Ry.* (1892) 145 U. S. 393, 12 Sup. Ct. 953; *Roy v. Harvey Peak Tin Mine, Milling & Mfg. Co.* (1906) 21 S. D. 140, 110 N. W. 106. And this rule applies although the transferee has but partly performed. *Perkins v. Savage* (1836, N. Y. Sup. Ct.) 15 Wend. 412. In the instant case the conveyance to the vendee has been executed; and a second sale has taken place by the trustee to the plaintiff, after which the court will enforce the plaintiff's rights if such sale executes the contract. *St. Louis, V. & T. H. R. Co. v. Terre Haute & I. R. Co., supra.* The question, therefore, in the instant case is whether the contract has been executed by this second sale by the trustee before the plaintiff has regained possession from the vendee. Where a deed has been made to defraud creditors, the grantor remaining in possession, a majority of courts will not sustain the grantee's action of ejectment. *Harrison v. Hatcher* (1872) 44 Ga. 638; *Kirkpatrick v. Clark* (1890) 132 Ill. 342, 24 N. E. 71; *contra, Mosely v. Mosely* (1857) 15 N. Y. 334; *Raguet v. Roll* (1836) 7 Ohio, Part 2, 70. In the instant case the parties are reversed, and the original grantor is seeking relief; considerations of sentiment would aid the plaintiff, but decisions as to illegal contracts should be divorced of sentiment. *Cf. Deans v. McLendon* (1855) 30 Miss. 343. Courts differ as to when an illegal contract is executed, and therefore it seems likely that no uniformity of decision will result in cases raising this question.

CONTRACTS—UNCERTAINTY OF TERMS—PROMISE OF A "LIBERAL AND VERY SUBSTANTIAL BONUS."—The plaintiff brought an action on a contract by the terms of which the defendant promised to pay him $250.00 a month with "a liberal and very substantial bonus" in addition. The plaintiff was paid only the monthly salary, and he sought to recover 5 per cent. of the receipts as a bonus. *Held,* that the contract as to the bonus was so indefinite and uncertain as not to be enforceable. *McDonald v. Acker, Merrall & Condit Co.* (1920, App. Div.) 182 N. Y. Supp. 607.

Where no statement is made as to compensation for services, the law invokes the standard of reasonableness, and the fair value of the services is recoverable in an action on the contract. *Rowell v. Ross* (1913) 87 Conn. 157, 87 Atl. 355. If, however, the terms of the promise mention some remuneration, but do not indicate the specific compensation the promisee is to receive, and the words used exclude the supposition that reasonable remuneration is intended, no contract can arise. *Butler v. Kemmerer* (1907) 218 Pa. 242, 67 Atl. 332 (promise to divide profits on a liberal basis). But if a benefit is conferred in the honest, though mistaken, belief that such a promise is binding, a recovery will be allowed on a *quantum meruit. Bluemner v. Garvin* (1907) 120 App. Div. 29, 104 N. Y. Supp. 1009 (promise of a fair share of the profits). However, if the terms of a promise indicate that the promisee did not rely on it as a contractual obligation, but trusted to the fairness and liberality of the defendant, there is not only no contract, but no reliance on a supposed contract, and consequently no legal duty